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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation | 22 VAC 40-72 |
| Regulation title | Standards for Licensed Assisted Living Facilities |
| Action title | ALF Regulation Comprehensive Revision |
| Document preparation date | October 20, 2004 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to make revisions to the assisted living facility licensing requirements to provide increased protection for the health, safety and welfare of aged, infirm or disabled persons who reside in such facilities. Because of the probable extent of the changes to the regulation in both content and format, it is proposed that the current regulation, 22 VAC 40-71-10 et seq., be repealed and a new regulation, 22 VAC 40-72 et seq., be adopted. The proposed action to adopt a new regulation would provide for a comprehensive examination of the current regulation and revisions based on implementation experience, changes in populations served in the facilities, legislative mandates, changes made to related regulations, current practices and research findings. The proposed action would also include technical amendments and clarifications.

Since the planned action is a comprehensive revision of the licensing requirements, all the standards would be open for review and possible change. The populations in assisted living facilities are significantly more impaired and at higher risk than they were at the time of the last comprehensive revision of the regulation. The increased physical health impairments of many elderly residents and the higher risk behaviors of many mentally impaired residents necessitate changes in standards in order to provide critical protections to vulnerable individuals. In addition, implementation experience has shown that changes are needed to some standards, and research findings and current practices indicate that other requirements should be considered for revisions.

The goal of the newly promulgated regulation is to address licensing issues and concerns in such a way that adequate protections are provided to all residents of assisted living facilities.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Legal authority for promulgation of this regulation is in §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1803, 63.2-1805, and 63.2-1808 of the Code of Virginia. The promulgating entity is the State Board of Social Services. The Code mandates the development of regulations in some sections and gives discretionary authority in others.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is a comprehensive examination and revision of the assisted living facility regulations and as such, all areas of the standards are open for review and possible change. Areas of concern that are currently being considered for revision include:

- Oversight of high acuity health-impaired residents;
- Services to mentally ill/mentally retarded residents, especially those considered to pose high behavioral risks;
- Consumer access to information;
- Administration of medication to residents;
- Provision of meals and other food related matters
- Management planning and control functions and procedures; to include quality improvement, risk management, incident reports, resident and family input;
- Staffing levels and readiness;
- Staff qualifications and training;
- First aid and CPR;
- Emergency preparedness and response;
- Certain physical plant issues, to include sleeping areas, bathroom facilities, and cooling devices; and
- Direct care staff roles in person-centered resident care.

Changes in the regulation are essential for the protection of the health, safety and welfare of assisted living facility residents. Physical impairments and mental deficiencies have increased in the overall resident population. Moreover, implementation experience has shown where standards are in need of revision.

There are several other areas being considered for substantial clarification and technical amendment. In addition, the new regulation will include requirements mandated by 2004 legislation requiring the ability of assisted living facilities to connect to an emergency power source. The new regulation will also include

changes based on revisions to the regulation entitled Assessment in Assisted Living Facilities, 22 VAC 40-745.

Potential issues that may need to be addressed as the regulation is developed are increased costs, especially for smaller facilities, and availability of qualified personnel in an industry with high staff turnover rates. Consideration is being given to ways to alleviate these potential issues as the regulation is developed.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

During the process to promulgate a new regulation, every standard in the current regulation that is under consideration for revision will be examined to determine whether there are less burdensome or intrusive ways to protect the health, safety and welfare of vulnerable adults residing in assisted living facilities. Public comment and the advice of the Assisted Living Facility Advisory Committee will be important factors in this examination. Other groups with interest in assisted living facilities may also be involved in providing guidance. Having a regulation is necessary to ensure that a minimal level of service and care is provided that is appropriate and adequate to meet the needs of aged, infirm or disabled residents.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is difficult to assess the impact that this regulation will have on the institution of the family and family stability because there is such a wide diversity in types of facilities and in resident and family circumstances. In some cases, having an elderly or disabled family member reside in an assisted living facility may strengthen the family; in other cases it may weaken the family. Depending upon the economic situation of the family and the cost of meeting the elderly or disabled family member's needs in different settings, there may be an increase or a decrease in disposable family income.

Under consideration for inclusion in the regulation is a new requirement for disclosure of specific information on an assisted living facility to prospective residents or their representatives in advance of admission to a facility and prior to signing a contract. This would enable prospective residents and their families to better compare facilities before making a decision and therefore assist in choosing the one that is most suitable for them.